S.B. CIVIL WRIT PETITION NO. 643/2005.
(BALWANT SINGH VS. STATE & ORS.)

DATE OF ORDER : 13.11.2006.

HON'BLE MR. GOVIND MATHUR, J.

Mr. H.S. Sidhu for the petitioner/s.
Mr. Shyam Ladrecha, AGA, for the respondents.

The petitioner retired from service on 31.03.1999 on achieving the age of superannuation while holding the post of Junior Engineer with the respondents. Prior to retirement of the petitioner from service, a Departmental Promotion Committee was convened to consider the candidature of the eligible persons for the purpose of promotion to the post of Assistant Engineer. The Departmental Promotion Committee recommended for promotion of the petitioner as Assistant Engineer under the criteria of Seniority-cum-Merit against the vacancies pertaining to the year 1998-99. In pursuant to the recommendations made by the Departmental Promotion Committee, an order dated 12.03.99 was passed by the Government of Rajasthan giving promotion to the petitioner as Assistant Engineer, however, no order of posting was issued before 31.03.1999 i.e. the date of retirement of the petitioner.

The grievance of the petitioner is that though he was promoted as Assistant Engineer, the respondents retired him from service as Junior Engineer and are also making payment of

all post retiral benefits including pension by treating him as Junior Engineer.

A reply to the writ petitioner has been filed on behalf of the respondents stating therein that as the petitioner never joined duties on promoted post i.e. of Assistant Engineer, therefore, he was not entitled for getting himself retired as Assistant Engineer and also for the post retiral benefits addressed to the post of Assistant Engineer.

Heard counsel for the parties.

It is not in dispute that the candidature of the petitioner for the purpose of promotion to the post of Assistant Engineer was considered by the competent Departmental Promotion Committee and the recommendation was also made promote him as Assistant Engineer against the vacancies of the year 1998-99. A consequential order was also passed by the State of Rajasthan on 13.09.1999 and that was received by the Chief Engineer concerned on 28.03.1999.

In view of the factual position above, the petitioner certainly became entitled to be appointed as Assistant Engineer against the vacancies of the year 1998-99. For any

administrative reasons or even due to lapse on part of the respondents, an order giving posting, if was not passed, then the petitioner cannot be put to a loss by depriving him the fruits of the promotion given in accordance with rules. The petitioner became entitled to be appointed as Assistant Engineer against the vacancies of the year 1998-99, therefore, the natural corollary was to post him as Assistant Engineer. Merely on the count that the petitioner retired on 31.03.99, the respondents cannot deny promotion to the petitioner as Assistant Engineer and its consequential benefits including the post retiral benefits. The government of Rajasthan made an order of promotion on 12.03.1999, therefore, the petitioner for all purposes is required to be treated as Assistant Engineer w.e.f. 12.03.1999.

Accordingly, this petition for writ is allowed. The respondents are directed to treat the petitioner as holder of post of an Assistant Engineer w.e.f. 12.03.1999. The petitioner shall be entitled for all post retiral benefits including pension accordingly by treating him an holder of the post of Assistant Engineer.

No order as to cost.

(GOVIND MATHUR)J.

Anil/